

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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**MEMORANDUM**

DATE: March 16, 2023

TO: Planning Directors and Interested Parties

FROM: Megan Kirkeby, Deputy Director
Division of Housing Policy Development

A handwritten signature in black ink, appearing to read "Megan Kirkeby".

SUBJECT: Summary and Clarification of Requirements for Housing Element Compliance

HCD is committed to diligently reviewing all 539 local jurisdictions' housing elements for substantial compliance with State Housing Element Law. To comply with State Housing Element Law and avoid the consequences of noncompliance, a local jurisdiction must, among other things:

1. Submit a draft housing element to HCD at least 90 days before adoption¹ and receive findings from HCD determining whether the draft element is substantially compliant,² and consider HCD's findings before adopting the draft element.³

In other words, where a jurisdiction submits an "adopted" housing element before submitting an initial draft or before considering HCD's findings on an initial draft, HCD will consider the "adopted" to be an initial draft for purposes of both HCD's review and the jurisdiction's statutory compliance.

2. If HCD finds the draft element is not substantially compliant, revise the draft to address any findings by HCD⁴ or adopt without changes and include written findings explaining why the jurisdiction believes that the draft substantially complies.⁵ Promptly following adoption, submit the adopted housing element to HCD⁶ and receive findings on the adopted element from HCD.⁷

¹ Gov. Code, § 65585, subd. (b)(1)

² Gov. Code, § 65585, subds. (b)(3), (d)

³ Gov. Code, § 65585, subd. (e)

⁴ Gov. Code, § 65585, subd. (f)(1)

⁵ Gov. Code, § 65585, subd. (f)(2)

⁶ Gov. Code, § 65585, subd. (g)

⁷ Gov. Code, § 65585, subd. (h)

In other words, a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance.

In addition, a jurisdiction is “in compliance” as of the date of HCD’s letter finding the adopted element in substantial compliance. Any other letters are not a finding of substantial compliance.

HCD recommends that a jurisdiction adopt only after receiving a letter from HCD finding the draft meets statutory requirements.

For more detailed information about this process, please visit HCD’s [Housing Elements webpage](#) and [Housing Elements Building Blocks](#).